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# Report submitted by the independent expert on the situation of human rights in the Democratic Republic of the Congo

## Note by the Secretariat**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the independent expert on the situation of human rights in the Democratic Republic of the Congo, Mr. Titinga Frédéric Pacéré, submitted pursuant to General Assembly resolution 59/207 and Commission on Human Rights resolution 2005/85.

*Summary*

The mandate of the independent expert, appointed on 26 July 2004 by the Chairperson of the Commission on Human Rights, was renewed on 21 April 2005 by Commission resolution 2005/85. In 2004, the independent expert carried out two missions to the Democratic Republic of the Congo, the first from 22 August to 2 September, prior to the presentation of his oral report to the fifty-ninth session of the General Assembly, and the second from 9 to 18 November, on which he visited the eastern part of the country, specifically South and North Kivu (Bukavu and Goma). In 2005, the independent expert returned to the Democratic Republic of the Congo from 16 to 27 August and visited, in addition to Kinshasa, the key district of Ituri. In the light of his meetings in situ, the information he has received and the analyses he has made, the independent expert makes the following assessment.

The human rights situation remains worrying throughout the territory of the Democratic Republic of the Congo, particularly in the eastern part of the country (Ituri, North Kivu and South Kivu) and in northern Katanga, where militias and other

* A/60/251.

** This report is being transmitted late because of the independent expert's recent mission to the Democratic Republic of the Congo, which took place only in mid-August 2005 and following which this report was drafted.

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armed groups, national and foreign, as well as the armed forces of the Democratic Republic of the Congo and the Mai-Mai are committing atrocities and other massive human rights violations with impunity. Massacres of civilians, mass rapes of women and girls and summary executions, among other things, have posed a serious challenge to the Transitional Government's efforts to improve the situation.

The suppression of peaceful demonstrations in Kinshasa, Kasai Oriental and Kasai Occidental by the forces of law and order, the precarious situation of unpaid or underpaid State employees and civil servants, the climate of impunity and the threats and harassment suffered by journalists and human rights defenders are causing unrest and jeopardizing the return to peace.

The main worries include the absence of consensus in the joint management of the transition period and the steady deterioration of law and order in Ituri (Province Orientale) following repeated attacks by armed militias. The absence of an independent judiciary and the executive branch's control over the judiciary and judicial decisions are also regrettable. Added to this is the problem of lack of security, the situation of women and children, the trafficking and illegal exploitation of natural resources and other violations of fundamental rights.

In such a context, the independent expert recommends:

- That the process of disarming the Forces démocratiques de libération du Rwanda, the Interahamwe, the "Rastas" and their Mai-Mai allies and their unconditional departure from Congolese territory should be accelerated;
- That with a view to ensuring social peace, the Ministry of the Interior should take all necessary measures to permit the active participation of all shades of political opinion in democratic processes;
- That the forces of law and order should be ordered to stop suppressing rallies and other demonstrations, as they have done recently;
- That those allegedly responsible for the criminal acts committed in the eastern part of the country should be questioned and brought to justice;
- That public freedoms should be respected throughout the electoral process, that mechanisms should be set up to combat the culture of impunity and that the Joint Commission on Good Governance should function effectively so as to combat and eradicate corruption and embezzlement of the salaries of State employees and the wages of soldiers and police;
- That the Government should strive to promote the independence of judges and magistrates and to ensure the independence of the judicial system, providing it with a budget that will guarantee its financial independence;
- That the Ministry of Social Affairs, the Ministry of Human Rights and the Ministry of the Interior, in cooperation with the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of the United Nations High Commissioner for Refugees (UNHCR), should speed up the return of internally displaced persons and refugees before the end of 2005.

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# I. Introduction

1. By its resolution 2004/84 of 21 April 2004, the Commission on Human Rights decided to appoint an independent expert to provide assistance to the Government of the Democratic Republic of the Congo in the field of human rights, to study the evolving situation of human rights in the Democratic Republic of the Congo and to verify that its obligations in that field were being fulfilled.

2. On 21 April 2005, the independent expert presented his preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/120).

3. In its resolution 2005/282, the Economic and Social Council approved the Commission's decision, in its resolution 2005/85, to: (a) extend the mandate of the independent expert for one year and request the Secretary-General to provide all necessary assistance to enable the independent expert to fulfil his mandate; (b) request the independent expert to submit a progress report to the General Assembly at its sixtieth session and to report to the Commission at its sixty-second session; and (c) renew its request to the Secretary-General that he should provide advisory services to the Democratic Republic of the Congo in the field of human rights.

4. In its resolution 59/207, the General Assembly decided to continue to examine the situation of human rights in the Democratic Republic of the Congo and requested the independent expert to report to it at its sixtieth session. This report is being submitted in response to that request.

5. The report is based on information transmitted regularly to the independent expert by OHCHR, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and representatives of institutions, churches, non-governmental organizations, political parties and associations, as well as information gathered during his recent mission to the country from 16 to 27 August 2005. The report reflects information received up to 7 September 2005.

6. The independent expert visited the Democratic Republic of the Congo for the third time from 16 to 27 August 2005, visiting Kinshasa and Bunia (Ituri). He had scheduled his mission to take place earlier, but had to delay it because of the events of 30 June and the security situation.

7. In Kinshasa, the independent expert talked to the country's authorities, particularly representatives of the Government and its institutions, the Special Representative of the Secretary-General for the Democratic Republic of the Congo and representatives of the judiciary, the diplomatic corps and the United Nations system. He also met with international non-governmental organizations, political parties, religious leaders and national non-governmental human rights organizations.

8. In Bunia, the independent expert talked to representatives of the Government and MONUC, the civil, military and police authorities and members of civil society. He also visited the central prison and the holding cell at the police station.

9. These meetings and discussions revealed that while attention is being focused on the electoral process, lack of security, impunity and serious human rights violations remain cause for concern.

10. The independent expert has decided to focus in this report on the following issues:

(a) Massive violations of human rights;

(b) Justice;

(c) Impunity;

(d) The electoral process.

11. The independent expert also carried out other activities related to his mandate; he expressed opinions to the Government and replied to human rights communications concerning such issues as lack of security, disarmament and reintegration of militias, justice, the campaign against impunity and the ratification of international treaties. Following the massacres perpetrated in the night of 9 to 10 July 2005 in the village of Ntulumamba in Kivu, the independent expert issued a joint appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women to the Government authorities and MONUC. Concerning the electoral process, the independent expert took advantage of his recent mission to submit suggestions and proposals to the Minister of the Interior and members of the so-called "radical" opposition.

# II. Status of the transition

## A. Legislative efforts

12. In his report to the Commission on Human Rights at its sixty-first session, the independent expert referred to law and international treaties that he will not take up again in this report. He nevertheless wishes to emphasize the Government's efforts in promulgating legislation designed to restore law and order, in particular:

- Act No. 04/002 of 15 March 2004 on the organization and functioning of political parties;
- Act No. 04/023 of 12 November 2004 on the organization of defence and the armed forces.

13. In addition, during the parliamentary session which ended on 4 July 2005, several bills were adopted, in particular:

(a) The draft Constitution, solemnly adopted on 16 May 2005 and formally handed over by the President of the National Assembly, Mr. Olivier Kamitatu, to President Joseph Kabila, in the presence of the sponsor of the Global and All-Inclusive Agreement, Mr. Thabo Mbeki, President of South Africa;

(b) The Referendum Act, promulgated on 23 June 2005 by President Kabila;

(c) The approval on 17 June by the National Assembly and the Senate of a six-month extension of the transition period.

14. Despite the adoption of this important body of laws, however, equally essential work remains to be done by Parliament in this area in order successfully to complete the transition process. Laws need to be adopted on:

- The amnesty;
- The status of judges and magistrates;
- The Supreme Council of the Judiciary;
- The electoral process;
- The status of the political opposition;
- The funding of political parties.

## B. The electoral process

15. The setting up of new democratic institutions for a new political order resulting from the Inter-Congolese Dialogue (ICD) in Sun City was a precondition for the holding of free, transparent and democratic election designed to put an end by the popular will to the crisis and sufferings endured by the Congolese people since they gained their independence (resolution DIC/CPJ/09 of 18 April 2002). It is in this context that Act No. 04/009 of 5 June 2004 on the organization, powers and functioning of the Independent Electoral Commission must be viewed, as well as Act. No. 04/24 of 24 December 2004 on the census and voter registration.

16. Since the appointment of its members in the provinces, the Independent Electoral Commission has worked on setting up its 11 provincial offices. It has also set up 64 liaison offices and 12 relay offices. Electoral materials have been distributed to 9,000 registration centres and 40,000 polling centres. Of necessity, voter registration is being carried out gradually.

17. The international community is strongly committed to supporting the pre-electoral process by mobilizing financial resources and suitable logistical resources. Because of the country's vastness, however, the Independent Electoral Commission, despite laudable efforts, is encountering serious problems in transporting census kits by air and securing registration offices and is one month behind schedule. As a result, some citizens will not be registered and will be unable to vote.

18. On 18 June 2005, 186 of the 221 registered political parties signed a code of conduct drawn up by the Independent Electoral Commission, outlining the principles for conducting the electoral process in a transparent, equitable, credible and non-violent manner.

19. On 20 June 2005, the Independent Electoral Commission launched the census and voter registration process in Kinshasa. This will continue throughout the country, with logistical support from MONUC.

20. The voter registration process in Kinshasa closed on 31 July 2005. Nearly 2.9 million people were registered, according to the Office of the High Commissioner for Human Rights, citing a report published by the Independent Electoral Commission.

21. The voter registration process begun on 25 July 2005 in Bas-Congo and Province Orientale continued on 7 August 2005 in the provinces of Kasai Oriental and Kasai Occidental and in Katanga amid widespread enthusiasm, according to observers.

22. It should be emphasized that this process sometimes encounters hostility in the eastern part of the country. For instance, 700 United Nations peacekeepers had to be deployed to Fataki, in Ituri, to secure the census and voter registration process. Despite all this, an electoral observer appointed by the local authorities was killed on 21 August at Bule, in Djugu territory, in an attack attributed to the armed group of Thomas Lubanga's Union des patriotes congolais (UPC).

23. At the practical level, the Chairman of the Independent Electoral Commission, Father Malu Malu, filed an application on 15 June 2005 for the transition period to be extended, given the situation on the ground. Under article 196 (2) of the Constitution, the two houses of Parliament, meeting to rule on this sensitive issue, decided to extend the transition period by six months, until 31 December 2005.

24. On Friday, 17 June 2005, Parliament's decision to extend the transition period by six months from 30 June 2005 was made public. The first round of combined legislative and presidential elections is due to take place on 20 March 2006. If a second round is needed, it will take place on 30 April 2006.

25. This decision aroused reactions. The Union pour la démocratie et le progrès social (UDPS), for instance, called on the population to demonstrate against the decision on 30 June 2005.

## C. Cohesion of the political actors involved in the transition

26. At the end of the first 24 months of the transition, the political actors involved have adopted divergent and at times even antagonistic positions.

27. The contacts made among the Parti du peuple pour la reconstruction et la démocratie (PPRD), UDPS and the Parti lumumbiste unifié (PALU) concerning the appointment of some of their leaders to high-level posts in the Administration have not resulted in any agreements.

28. The decision to extend the transition period beyond 30 June 2005 has had the effect of hardening opposing positions, approaches and attitudes.

29. In order to preserve the fragile, hard-won peace, the political actors should opt for the approach of dialogue in order to prevent the situation from deteriorating.

## D. Consolidation of the army and police

30. The Government has been making a census of members of the armed forces in order to bring their numbers under control and contain the wage bill.

31. Despite the joint efforts of the international community, in particular Belgium, France, the Netherlands, South Africa and Angola, the integration of the armed forces of the Democratic Republic of the Congo, the Congolese National Police and other security forces is far behind schedule.

32. The Structure militaire d'integration (SMI), the authority in charge of army integration, does not have the resources to impose integration on the former belligerents, who prefer to keep part of their armed forces in their strongholds in case the electoral process fails.

## E. Disarmament and reintegration

33. The disarmament and community reintegration programme has made considerable progress: 15,607 combatants from a variety of militia groups, including 4,395 children, have been counted and 6,300 weapons seized. Coordination of the actions of State political and judicial authorities and MONUC has improved.

34. In Katanga, as part of a campaign called "Bicycles for Weapons" conducted from April to June 2005, the Congolese non-governmental organization Paix et réconciliation (PAREC) recovered 3,601 weapons, which were handed over to the military authorities on 7 July 2005.

## F. Armed groups

35. The many armed groups operating essentially in the eastern part of the country, especially in Ituri, are gradually losing power, room to manoeuvre and the ability to do harm, as a result of the operations, sometimes necessarily forceful, of MONUC and Government forces.

36. The Forces armées du peuple congolais (FAPC) and the Union des patriotes congolais-Kisembo (UPC-K), for example, are gradually disappearing. UPC-Lubanga (UPC-L), the Front des nationalistes et intégrationnistes (FNI), the Forces de résistance patriotique de l'Ituri (FRPI) and the Parti pour l'unité et la sauvegard de l'intégrité territoriale du Congo (PUSIC) have now, proportionally, lost much of their strength.

## G. Affirmation of the authority of the State and the judicial system

37. The eastern part of the country — especially Ituri, but also other areas considered rich in valuable ores and precious metals — was not under the State's authority, but the pockets outside its sovereignty are growing smaller.

38. On his visit to Ituri on 22 August, the independent expert noticed this change when he was able to leave the centre of Bunia to visit a voter registration centre. The presence of the Congolese armed forces and their joint operations with MONUC are clear signs of State authority, an authority also evidenced at the administrative and political level by the presence of the District Commissioner, whom the independent expert visited.

39. The independent expert saw further evidence of this presence of the State and exercise of its prerogatives in Ituri on 23 August 2005, when he attended trials involving warlords. He entered the courtroom as the individual known as Chief Kawa was called to the stand. Chief Kawa is the armed militia leader who in 2002 seized the then Minister for Human Rights, Professor Ntumba Luaba, and his delegation and held them hostage for several days.

40. With regard to military justice, the arrest and detention of Thomas Lubanga, General Floribert Ndjabu Ngabu and several other former militia leaders promoted to the rank of general for the sake of national reconciliation were welcomed by the population and show the State's determination to combat impunity.

41. At the judicial level, it should be noted that between 1 February and 30 April 2005, the Government arrested some members of the Congolese armed forces as part of its campaign to combat impunity.

42. While the Government is to be congratulated on its courage in making these arrests, however, many observers are sceptical that the cases will be prosecuted. They deplore the fact that, for many years now, crimes have continued to be committed on a vast scale against the civilian population, resulting in thousands of deaths.

43. The independent expert deplores the fact that a Bunia warlord, Jerôme Kakuavu, promoted to the rank of general of the Congolese armed forces and subsequently charged and sent to Kinshasa, was released as soon as he arrived in the capital.

44. These prosecutions are nonetheless welcome, since they restore public confidence in efforts to combat serious crime and impunity.

45. It is in the political arena that the drama of the impunity of the major actors is primarily being played out. The actions of human rights defenders require determination and strong convictions, given the real risks entailed. At the national level, the joint actions of the Ministry of Human Rights, the National Human Rights Monitoring Centre (ONDH), institutions and non-governmental human rights, organizations usually operating on a shoestring, are obviously to be welcomed and encouraged.

## III. Massive human rights violations

46. The independent expert noted massive human rights violations at all levels.

47. Many observers of the national situation criticize the absence of discipline and of respect for the chain of command; local State employees, acting unilaterally and without instructions, assume responsibilities and compound the lack of State control. The supervisory authorities should take charge, act firmly and tightly control the functioning of the chain of command, in keeping with the rule of law.

### A. Freedom of expression, opinion, assembly and peaceful demonstration

48. Articles 27 to 30 of the Transitional Constitution guarantee all persons the right to freedom of expression, assembly and peaceful demonstration. This year, however, freedom of expression and peaceful demonstration was sorely tested.

49. The Administration must refrain from sending in the forces of law and order to disperse unarmed demonstrators using disproportionate violence. The use of firearms with real bullets is prohibited. Political parties, for their part, must control their members and avoid harmful excesses.

50. After the Chairman of the Independent Electoral Commission issued an opinion concerning a possible postponement of the elections, riots broke out in Kinshasa on 10 January 2005, leaving four people dead.

51. In the days around 30 June 2005, popular demonstrations were held in response to the call by UDPS to protest against the extension of the transition period. The demonstrations were violently suppressed by the police and resulted in between 13 and 21 deaths, numerous injuries and hundreds of arrests, according to a variety of sources (MONUC, ONDH).

52. In a number of cities (Kinshasa, Mbuji-Mayi, Tshikapa), people who came out to march clashed with the forces of law and order. Given the number of people injured, several observers feel that the police response was disproportionate, considering the size of the demonstrations, which were smaller than predicted. Calls for moderation and calm from all sides helped considerably to defuse the situation.

## B. Sexual violence

53. In his report to the Commission on Human Rights at its sixty-first session, the independent expert focused on this type of violence, which remains worrying, widespread and particularly grave. The present report will refer to only a handful of the thousands of cases of abuse known to have occurred throughout the territory.

54. In Equateur province, especially in the villages of Songo Mboyo and Bongandanga, 520 women and girls were raped on the night of 23 to 24 December 2004 by 80 members of the Congolese armed forces, formerly of the Mouvement pour la libération du Congo (MLC). Of the victims, 250 agreed to testify and receive assistance. Twenty-eight identified the soldiers who had raped them, 12 of whom were arrested. Thanks to vigorous action by Lawyers without Borders, OHCHR and MONUC, the accused will be tried by a military court on 4 October 2005 at Mbandaka, the capital of Equateur province.

55. The independent expert was also informed of collective rapes committed by the Forces démocratiques pour la libération du Rwanda (FDLR) in the eastern part of the country (Walikale territory, Kissimba group, villages of Katobi (three cases), Pety (two cases) and Bironga (one case)). The rapes occurred on 20 and 21 February 2005 and were reported in May 2005. The first victim was raped by four people, the second by five, the third by three, the fourth by 10 and the fifth, who was pregnant at the time, by 15 militiamen.

56. Thirty-four cases of sexual violence were recorded in Bunia; dozens of others were recorded in the provinces of Katanga, South Kivu, North Kivu, Maniema, Province Orientale and Equateur. According to MONUC, Doctors without Borders recorded 900 rapes in 2003 in Bunia, in Ituri District. On 17 June 2005, several girls aged 3 to 10 were raped by a civilian near Kalemie in Katanga.

## C. Situation of children

57. The situation of children in the Democratic Republic of the Congo remains very worrying. On the occasion of the Day of the African Child, observed on 16 June 2005 in Kinshasa, the Child Protection Section of MONUC condemned the fact

that children were still victims of grave violations of human rights in the Democratic Republic of the Congo even though the conflict has abated.

58. A MONUC/Lubumbashi delegation found that over 100 children are working in a Chinese mining company in Lubumbashi. They work in dangerous and unhealthy conditions, cleaning and packaging ores for export bare-handed and without any protection against dust and toxic substances.

59. The tragedy of Congolese children is endless: from those used in armed conflict to street children to the massacre of "children for allegedly engaging in witchcraft". It is a situation that cries out for attention.

## D. Refugees and internally displaced persons

60. According to the UNHCR office in Kinshasa, the Democratic Republic of the Congo ranks third in the world among countries of origin of refugees, with Congolese refugees totalling 462,000, just behind Sudan (730,000) and Afghanistan (2,084,900). According to UNHCR, there are still 150,000 Congolese refugees in the United Republic of Tanzania. The problem of internally displaced persons is extremely worrying. For instance, the July 2005 figure for Ituri was 208,705 such persons.

61. Records show that, during the period February to April 2005, 285 displaced persons returned to their places of origin in Kindu, Kalima and Kasongo, in Maniema province, under the pilot project for the protection, reintegration and social reinsertion of displaced persons carried out by the Ministry of Social Affairs in partnership with the agencies of the United Nations system.

62. On 20 May 2005, over 2,500 war-displaced persons were returned to their communities of origin on board the naval vessel M/B *Inga*, using the Congo River route from Kinshasa to Kisangani, via Mbandaka, Bumba and Lisala (Equateur).

## E. The prison situation

63. On 23 August 2005, the independent expert visited the police holding cell in Bunia, designed to hold around 30 detainees. However, 130 people of all ages, and at all stages of the judicial process (police custody, pretrial detention, convicted minors and adults), are crammed in there.

64. The prison system is deplorable and inhumane and detention conditions are appalling. None of the Standard Minimum Rules for the Treatment of Prisoners is respected: there is no decent food, no health care, no separation of categories of detainees or cells and a complete lack of hygiene. Despite the laudable efforts of non-governmental organizations such as the International Prison Fraternity, resources are sorely lacking.

## F. Freedom of movement

65. Many ambushes have been laid along main roads in the eastern part of the country, especially on the Goma-Rutshuru and Goma-Masisi roads (North Kivu), and freedom of movement is restricted. In South Kivu, members of the Congolese

armed forces, the National Intelligence Agency and FDLR have erected over 40 roadblocks on several roads. All these roadblocks are used to extort money and ransoms from the population.

### G. Violations of physical integrity, disappearances, cruel and degrading treatment, torture, death threats and the death penalty

66. In the period from February to April 2005, cases of torture and other cruel, inhuman and degrading treatment of private individuals were reported.

67. One detainee died as a result of the torture and inhuman treatment inflicted on him. Such practices have been identified in prisons and holding cells in Kinshasa, Masisi, Goma and Lubumbashi.

68. Between February and April 2005, two death sentences were reported: one of a soldier sentenced by court martial at Mbandaka garrison (Equateur) and the other by court martial at Matadi garrison (Bas-Congo).

69. Between February and April 2005, a number of people were threatened and intimidated by both civilian and military security forces, mainly in Kinshasa and Katanga, because of their political opinions or those of family members. Several human rights campaigners were targeted, including Bar President Jean-Claude Muyambo, Chairman of the non-governmental development organization "Solidarité Katangaise", Floribert Chebeya, Chairman of "Voix des sans voix" and a number of human rights campaigners in Bukavu, Goma, Butembo and Lubumbashi.

70. With regard to enforced or involuntary disappearances, certain events were brought to the independent expert's attention. In April 2005, a news cameraman went missing after receiving threats from the security services in Kinshasa. On 12 February 2005, two women were abducted, each with her baby, in Rubare (North Kivu) and subsequently disappeared.

71. On 31 July 2005, a very active human rights campaigner, Pascal Kabungulu, Executive Secretary of the non-governmental organization "Héritiers de la justice" was murdered in his home by two unidentified men in uniform. The different pressures from civil society notwithstanding, the commission of inquiry set up by the Government is making no headway, for lack of resources.

## IV. Justice, impunity and possible solutions

### A. The internal justice system and impunity

72. Any evaluation of the functioning of justice must look primarily at the working conditions and resources of the Congolese judicial system.

73. The total amount allocated to the justice budget in 2003 was 482,485 billion Congolese francs (US$ 1.38 billion). Operational expenditures account for 3,014 billion Congolese francs, or 0.7 per cent of the total budget.

74. The ratio of judicial personnel to the total population is very low. If the number of strictly judicial personnel is divided by the number of inhabitants, the result is a derisory ratio of 0.000027:1. Likewise, if the number of judicial personnel

actually assigned to court proceedings is divided by the country's area, estimated at 2,344,885 square kilometres, the result is 0.0005 magistrates or judges per 1,000 inhabitants per square kilometre.

75. Judges' and magistrates' salaries range from US$ 13 for a local magistrate to US$ 30 for senior Supreme Court judges and prosecutors. It should nevertheless be noted that substantial monthly bonuses ranging from US$ 350 to US$ 500 are paid to all judges and magistrates. These bonuses are 15 to 20 times higher than the salaries of some judicial officials. An equally important distinction must be drawn between poor rural magistrates working in extremely difficult conditions and judges in urban areas who are guaranteed a minimum salary (see annex I, taken from the report of the organizational audit of the judiciary (May 2004)).

76. The independent expert also observed that clerks of the court also act as bailiffs in the Democratic Republic of the Congo.

77. Judges and magistrates have complained about their meagre salaries; some have waited four or five years to receive a tiny advance. With such working conditions, they are at the mercy of persons under their jurisdiction. The independent expert was told that judges and magistrates were driven to hearings by defendants. The financial independence of the judiciary is obviously vital for the proper functioning of the judicial system.

78. On 25 August 2005, the independent expert visited the High Military Court, the country's highest military court in Kinshasa, accompanied by the First President of the Court. The courtroom is simply a tent open to the rain and the elements.

79. Obviously, in such conditions crime cannot be counterbalanced. Judges cannot assert themselves, still less pass independent, fair and equitable judgements, since they are dependent on their accused for transport during their investigations. That being the case, there is no guarantee of protection for them if they question, arrest, try, convict or imprison a warlord. Judges and magistrates are not free to take decisions and have no protection against political or other pressures.

80. The existence of an independent and impartial judiciary and an independent bar is an essential prerequisite for ensuring the protection of human rights and guaranteeing that there is no discrimination in the administration of justice.

81. The internal justice system is powerless and lacks resources. The avenue currently indicated for functioning courts of law is the International Criminal Court.

## B. The International Criminal Court: severe limits on the campaign against impunity

82. The Office of the Prosecutor of the International Criminal Court declared its intention to investigate the many crimes within its jurisdiction committed in the Democratic Republic of the Congo since 1 July 2002. A field office of the Prosecutor's Office has now been set up in Kinshasa and has begun its preliminary investigations.

83. It is clear from the foregoing that the International Criminal Court alone cannot satisfy the need to try all the crimes and serious violations of human rights and international humanitarian law committed in the Democratic Republic of the Congo over almost a decade, its jurisdiction being limited to acts committed since

the entry into force of the Rome Statute. What is needed, therefore, is a mechanism that would guarantee not only the effective suppression of war crimes and crimes against humanity, but also the administration of justice and an all-out campaign against impunity.

## C. Establishment of a special international criminal tribunal or joint criminal chambers

84. In order to combat impunity, which must be done if there is to be peace in the country and further crimes are to be prevented, the independent expert recommends the creation of a special international tribunal or, failing that, joint criminal chambers to try crimes committed since 1994, the year specified in United Nations resolutions for serious violations of humanitarian law.

85. Certain measures could be taken to reduce the costs of a special tribunal: it could sit within the country, somewhere near its centre, in order to keep down the costs of transporting defendants and witnesses; the host State could be asked to consider providing premises and defraying certain costs; at least half the judges and three quarters of the judicial personnel would be citizens of the Democratic Republic of the Congo; and the host State could be responsible for appointing lawyers. Such matters would have to be settled under bilateral agreements.

86. Should it prove impossible to create an international tribunal, consideration could be given to establishing joint criminal chambers for the Democratic Republic of the Congo, which would come under the authority of the appeal courts and the Supreme Court of Justice.

87. As part of efforts to combat impunity and extremely serious crimes, joint criminal chambers could be attached to the appeal courts, with the right of appeal (preliminary and final appeal) to a chamber that is competent to hear it but which would come under the Supreme Court:

(a) Chambers of first instance could come under five appeal courts, one in Kinshasa and the other four strategically located throughout the country;

(b) Chambers of first instance could be composed of three judges (two nationals and one non-national, or vice versa);

(c) Courts of appeal could be composed of three judges (two non-nationals and one national, or vice versa);

(d) The Public Prosecutor's Office would also be involved in hearings and related work, on the basis of the same criteria.

88. The name of the institution could be the "Joint Criminal Chamber" and it would be responsible for trying persons accused of acts of genocide or other serious violations of international humanitarian law committed on the territory of the Democratic Republic of the Congo, as well as citizens of the Democratic of the Congo accused of committing such acts or violations on the territory of neighbouring States.

89. Such an institution would be more flexible and less costly should the creation of a special international criminal tribunal prove unfeasible. It should nevertheless receive full support from the international community, given the country's current

destitution. The new joint criminal chambers should also contribute to restoring the country's judicial system (in terms of staff, training, equipment and living and working conditions).

## V. Recommendations

90. **The independent expert recommends to all the Congolese parties, whether or not signatories to the Global and All-Inclusive Agreement, that they should:**

- **Promote among the population a culture of peace, tolerance, reconciliation, pardon, fraternity, peaceful coexistence, integration, national unity and patriotism; persuade the population to work for national construction and the rejection of discrimination in all its forms and to combat defeatism, fatalism and despair.**
- **Recognize the need for all political actors to foster the culture of dialogue and rejection of violence or incitement to violence and ethnic hatred.**

91. **The independent expert recommends to the Government of National Unity and Transition that it should:**

- **Take all necessary measures to affirm and consolidate the State's authority over the entire territory.**
- **Ensure the effective integration, reunification, reinforcement and equipment of the army and police.**
- **Improve the currently precarious and inadequate physical, intellectual and equipment conditions of institutions and employees of the State, especially the judiciary, so that it can respond effectively to the requirements of justice and the fight against impunity.**
- **Combat the trafficking and illegal exploitation of natural resources.**
- **Combat all the crimes that continue to be committed, particularly rape and sexual violence against women and children as a weapon of war and arson of homes and property.**
- **Combat the continuing use of children for war and related purposes; combat militias and privately-armed groups and prevent them from rearming.**
- **Combat the impunity which gives rise to crime.**
- **Work to enhance the status of women, protect them and help them to fulfil their potential.**
- **Dismiss from the Government and institutions all alleged perpetrators of crimes against humanity and serious human rights violations.**

92. **At the international level, the expert recommends that:**

(a) **The international community should:**

- **Support the transition to permit the establishment of the rule of law and a culture of lasting peace.**

- **Support the restructuring, integration, recruitment, training and equipping of the army, the security forces and the police.**

- **Increase its support (personnel, financial, equipment) for MONUC to enable it, in support of the Congolese armed forces, to meet the various challenges posed by the constant crime and unrest within the country and on its borders.**

- **Assist the field office of the Office of the High Commissioner for Human Rights in the Democratic Republic of the Congo in implementing its programmes and activities.**

- **Provide all necessary assistance to enable the independent expert to fulfil his mandate, taking into account the vastness of the country and the many human rights areas covered by his mandate.**

(b) **That the Commission on Human Rights, the General Assembly, the Security Council and the Economic and Social Council should:**

- **Given the destitution of the judicial system in the Democratic Republic of the Congo and the scale of the crimes being perpetrated there for over a decade, establish by decision of the Security Council an international criminal tribunal for the Democratic Republic of the Congo or, failing that, consider the creation of joint criminal chambers within existing Congolese courts to hear cases involving crimes committed before 1 July 2002.**

# Annex I

## Judicial staff (Audit*)

### Number of judges, prosecutors, magistrates, clerks of the court and other judicial staff

| | | |
|---|---|---|
| A. | Judges and magistrates | 375 |
| B. | Prosecutors | 1 575 |
| | | 1 950 |
| C. | Clerks and bailiffs | |
| | Kinshasa | 453 |
| | Interior | 576 |
| | | 1 029 |
| D. | Prosecution clerks | |
| | Kinshasa | 496 |
| | Interior | 336 |
| | | 832 |
| E. | Criminal investigation officers | |
| | Kinshasa | 289 |
| | Interior | 161 |
| | | 450 |
| F. | Prison staff | |
| | Kinshasa | 209 |
| | Interior | 150 |
| | | 359 |
| G. | Trial lawyers | |
| | Kinshasa-Gombe bar | 620 |
| | Kinshasa-Matete bar | 135 |
| | | 755 |

* *Source*: Report of Professor Joseph Mvioki, prepared as part of the mission (cited in the report of the organizational audit of the judiciary, May 2004).

# Annex II

## Monthly salaries of Congolese judges, prosecutors and magistrates as at 15 May 2003*

| | *Congolese francs* | *United States dollars* |
|---|---|---|
| **Supreme Court of Justice** | | |
| First President | 12 600 | 30 |
| **Office of the Attorney-General of the Republic** | | |
| Attorney-General | 13 425 | 32 |
| **Court of Appeal** | | |
| First President | 9 265 | 22 |
| **State Prosecution Service** | | |
| State Prosecutor | 9 265 | 22 |
| **Court of major jurisdiction** | | |
| President | 7 475 | 17.75 |
| **Prosecution service of major jurisdiction** | | |
| Public Prosecutor | 12 175 | 29 |
| **Magistrates' courts** | | |
| Magistrates | 5 990 | 14.26 |

* *Source*: Annex to the report of Professor Akele, prepared in connection with a preparatory support mission requested by UNDP, 1999, p. 39.

# Annex III

## Individuals and institutions that the independent expert met in August 2005

### Kinshasa

- The Minister for Foreign Affairs
- The Minister for Human Rights
- The Minister for Social Affairs
- The Minister of the Interior
- The President of the National Assembly
- The President of the Senate
- The Chairman of the National Human Rights Monitoring Centre
- The Chairman of the Independent Electoral Commission
- The Chairman of the Media Authority
- The Chairman of the Truth and Reconciliation Commission
- The Chairman of the Ethics and Anti-Corruption Commission
- The Chairman of the Standing Committee on the Reform of Congolese Law (three meetings with the Minister of Justice were cancelled at the Ministry's request)
- The First President of the Supreme Court
- The First President of the High Military Court
- The Auditor-General of the Congolese armed forces
- The Attorney-General of the Republic
- The Special Representative of the Secretary-General for the Democratic Republic of the Congo, Mr. William Swing, Director of MONUC
- The Director of the field office of the Office of the High Commissioner for Human Rights (several meetings with the office)
- Ambassadors
- Representatives responsible for technical cooperation and donors
- The Director of the Human Rights Section (MONUC)
- The Head of the Child Protection Section (MONUC)
- Heads of missions of the United Nations system
- UNFPA
- UNICEF
- International organizations

- The Executive Secretary of PPRD
- The Executive Secretary of UDPS
- The President of PALU
- The Vice-President of the Forces novatrices pour l'union et la solidarité (FONUS)
- The Head of the Catholic Church
- The Head of the Protestant Church
- The Head of the Kimbanguist Church
- National organizations for the promotion and protection of human rights

## Bunia (Ituri)

- The District Commissioner
- The President of the Court of Major Jurisdiction and the Public Prosecutor
- The President of the Military Court and the Military Auditor
- The Commander of the Congolese armed forces
- The Police Supervisor
- The Commander of the Congolese National Police
- The Commander of the Ituri Brigade
- The Director of MONUC
- The Human Rights and Child Protection Department
- Non-governmental human rights organizations
- Officers of court defenders' associations
- Visit to the central prison and to the police station holding cell